

Message Text

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ORIGIN OPIC-06

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DRAFTED BY OPIC/GC :RSTERN

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FM SECSTATE WASHDC
TO AMEMBASSY ANKARA
INFO AMEMBASSY PARIS

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FROM OPIC - PARIS FOR RFC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: AMERICAN HOME PRODUCTS INCONVERTIBILITY CLAIM

REF: ANKARA 5530

1. IN ALL COUNTRIES IN WHICH OPIC PROGRAMS OPERATE, A
BILATERAL AGREEMENT WITH THE HOST GOVERNMENT GIVES THE USG
THE RIGHT TO USE FOR USG ADMINISTRATIVE EXPENSES ANY LOCAL
CURRENCY ACQUIRED IN CONNECTION WITH OPIC CLAIMS PAYMENTS.
WHEN OPIC PAYS AN INCONVERTIBILITY CLAIM IT ACQUIRES THE
LOCAL CURRENCY INVOLVED FROM THE INVESTOR AND, THROUGH THE
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UNITED STATES DISBURSING OFFICER, SELLS IT FOR US DOLLARS
TO OTHER USG AGENCIES (USUALLY THE EMBASSY) FOR THEIR
LOCAL EXPENSES. THE NET EFFECT OF THIS ON THE HOST GOVERN-
MENT'S FOREIGN EXCHANGE IS THE SAME AS IF THE HOST GOVERN-
MENT ITSELF HAD MADE THE TRANSFER (EXCEPT FOR THE EFFECT
OF CURRENCY DEVALUATIONS WHICH MAY OCCUR DURING THE
PROCESSING PERIOD, WHICH ARE BORNE BY OPIC). THUS, THE

HOST GOVERNMENT HAS AN INTEREST IN INCONVERTIBILITY CLAIM PAYMENTS. ALSO, IN SOME CASES HOST GOVERNMENTS ARE CONCERNED ABOUT THE EFFECT ON THEIR CREDIT RATING OF AN OPIC INCONVERTIBILITY PAYMENT, BUT OPIC DOUBTS THAT SUCH CONCERNS ARE PRESENT IN THIS CASE.

2. OPIC INCONVERTIBILITY COVERAGE BASICALLY PROTECTS THE INVESTOR FROM CHANGES IN THE RULES UNDER WHICH IT CAN TRANSFER LOCAL CURRENCY WHERE SUCH CHANGES OCCUR AFTER THE EFFECTIVE DATE OF THE INSURANCE CONTRACT. INCLUDED IN THIS PROTECTION AGAINST CHANGES IN THE RULES IS PROTECTION AGAINST SUBSEQUENT INTERPRETATION OR APPLICATION OF THE LAWS IN EXISTENCE ON THE DATE OF THE INSURANCE CONTRACT WHICH COULD NOT REASONABLY HAVE BEEN FORESEEN BY THE INVESTOR. MOREOVER, THE INSURANCE COVERAGE APPLIES WHETHER OR NOT THE CHANGES ARE LEGAL AND VALID UNDER DOMESTIC AND INTERNATIONAL LAW. THUS, OPIC PAYMENT OF AN INCONVERTIBILITY CLAIM DOES NOT NECESSARILY IMPLY THAT THE HOST GOVERNMENT HAS DONE ANYTHING IMPROPER. OPIC'S FINDING OF LIABILITY IN THIS CASE WILL BE BASED UPON A CONCLUSION THAT THE "LINKAGE" DISCUSSED IN OPIC'S MAY 18 LETTER COULD NOT HAVE BEEN FORESEEN BY THE INVESTOR. IN ANY EVENT, AS IN ALL PREVIOUS PAYMENTS OF INCONVERTIBILITY CLAIMS BUT ONE, OPIC DOES NOT INTEND TO PRESS ANY ACTION AGAINST THE HOST GOVERNMENT IN CONNECTION WITH THIS CLAIM. OPIC WILL MERELY SELL THE FUNDS FOR USG ADMINISTRATIVE LIMITED OFFICIAL USE

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EXPENSES TO EFFECT WHAT SALVAGE IT CAN. THERE WILL BE NO IMPLICATIONS UNDER THE HICKENLOOPER OR GONZALEZ AMENDMENTS. THE ONLY INTEREST OF THE GOT IN THE MATTER SHOULD BE THAT CONCERNING THE EFFECT ON ITS FOREIGN EXCHANGE.

3. UNDER THE JANUARY 17, 1969 LETTER AGREEMENT SUPPLEMENTING THE BILATERAL AGREEMENT, BEFORE PAYING AN INCONVERTIBILITY CLAIM OPIC MUST AFFORD THE GOT 30 DAYS TO COMMENT ON THE QUESTION OF WHETHER THE INVESTOR WOULD HAVE BEEN PERMITTED TO EFFECT A TRANSFER OF THE LOCAL CURRENCY UNDER THE LAWS, REGULATIONS, INTERPRETATIONS, ETC. IN EFFECT WHEN THE INSURANCE CONTRACT WAS ISSUED OF WHICH THE INVESTOR COULD REASONABLY BE EXPECTED TO HAVE THEN HAD KNOWLEDGE. IF, BASED ON THIS ISSUE, THE GOT OBJECTS TO A PROPOSED OPIC PAYMENT, A 30-DAY CONSULTATION PERIOD IS MANDATED. FINAL DETERMINATION, OF COURSE, REMAINS WITH OPIC.

4. OPIC BELIEVES THAT THE GOT'S RESPONSE TO THE OPIC LETTER IS INTENDED AS A STATEMENT THAT IT WILL NOT OBJECT TO AN OPIC CLAIM PAYMENT BASED UPON THE SPECIFIC TERMS OF THE INSURANCE CONTRACT AND AHP'S UNIQUE FACT SITUATION,

ALTHOUGH THE GOT CONTINUES TO ASSERT THAT IT HAS ACTED ENTIRELY IN ACCORDANCE WITH LAW. HOWEVER, TO AVOID ANY POSSIBLE MISUNDERSTANDING, OPIC BELIEVES IT PRUDENT TO OBTAIN AN INFORMAL ACKNOWLEDGEMENT THAT NO OBJECTION WILL BE RAISED.

5. AS SOON AS EMBASSY OBTAINS A FAVORABLE RESPONSE FROM THE GOT, OPIC WILL REQUEST INVESTOR OR THE TURKISH ENTERPRISE TO DELIVER A DRAFT TO THE EMBASSY FOR THE LOCAL CURRENCY PAYABLE TO THE U.S. DISBURSING OFFICER. OPIC HEREBY AUTHORIZES THE EMBASSY TO DESIGNATE AN INDIVIDUAL TO RECEIVE PAYMENT ON BEHALF OF OPIC OF LOCAL CURRENCY FOR CREDIT TO OPIC ACCOUNT 20FT471. FUNDS SHOULD BE CREDITED TO OPIC REVOLVING ACCOUNT 71X4030 AS THEY ARE SOLD FOR LIMITED OFFICIAL USE

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LOCAL USG EXPENSES AND OPIC SHOULD BE ADVISED AS CREDITS ARE MADE. EMBASSY OFFICIAL IS AUTHORIZED TO ISSUE A RECEIPT TO INVESTOR REPRESENTATIVE AS FOLLOWS: "I HEREBY ACKNOWLEDGE RECEIPT OF A CASHIER'S OR CERTIFIED CHECK DRAWN ON (NAME OF BANK) DATED (DATE) IN THE AMOUNT OF (AMOUNT) TURKISH LIRA MADE PAYABLE TO U.S. DISBURSING OFFICER FOR CREDIT TO OVERSEAS PRIVATE INVESTMENT CORPORATION. ACCEPTANCE OF THIS CHECK DOES NOT CONSTITUTE OR IMPLY A DETERMINATION OF ANY CLAIM MADE BY AMERICAN HOME PRODUCTS CORPORATION UNDER CONTRACT OF GUARANTY NO. 5040 OR A WAIVER OF ANY RIGHTS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION UNDER THAT CONTRACT."

6. OPIC REQUESTS THAT LIRA BE USED FOR USG EXPENSES AS SOON AS USG REQUIREMENTS AND APPLICABLE REGULATIONS PERMIT.

7. OPIC APPRECIATES EMBASSY'S CONTINUING PROMPT ASSISTANCE AND REGRETS THAT THE ABOVE BACKGROUND INFORMATION WAS NOT FURNISHED SOONER. VANCE

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, CLAIMS, FOREIGN EXCHANGE, DEBT REPAYMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 04 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
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Disposition Remarks:
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Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780896/aaaadcxp.tel
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Litigation Codes:
Litigation History:
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Previous Handling Restrictions: n/a
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Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
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Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1832093
Secure: OPEN
Status: NATIVE
Subject: AMERICAN HOME PRODUCTS INCONVERTIBILITY CLAIM
TAGS: EINV, TU, US
To: ANKARA
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/cae2356a-c288-dd11-92da-001cc4696bcc
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